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REMARKS

The Examiner has rejected each of the claims under 35 U.S.C. 103(a) as being unpatentable over Chess et al. (USPN 6,711,583) in view of Smithson (USPN 6,886,099). Applicant respectfully disagrees with such rejection.

Specifically, the Examiner has relied on the following excerpts from Chess to meet applicant's claimed "logging code operable to maintain a statistical log having an entry for each file sent to the computer for review, each entry being arranged to store a count value indicating the number of times that the file has been sent to the computer for review and a value of one or more predetermined attributes relating to the file" (see this or similar, but not necessarily identical language in each of the independent claims).

> "When the anti-virus program 201 begins a scan of the system 100, either in response to user input from, for example, a terminal 205 or due to the expiration of a, preferably periodic, timer 206, the anti-virus program 201 invokes the generic document-virus detection and repair module 202. Alternatively, the scan can be initiated in response to a document changing event such as each occurrence of a document changing, an Nth occurrence of a document changing (where N is some positive integer value) or a certain number of documents having changed." (col. 5, line 62 - col. 6, line 5)

After carefully reviewing the above excerpt and the remaining references, for that matter, it is apparent that the references relied upon by the Examiner only track a <u>single</u> value, namely a number of occurrences of a document changing. In contrast, applicant teaches and claims logging <u>two</u> values, namely "a count value indicating the number of times that the file has been sent to the computer for review <u>and</u> a value of one or more predetermined attributes relating to the file" (emphasis added). To this end, the Examiner's proposed combination fails to meet applicant's claimed <u>count value indicating the number of times that the file has been sent to the computer for review</u>. It should be noted that tracking <u>a number of occurrence a document has been changed</u> does <u>not</u> equate to <u>a number of times that a file has been sent to the computer for review</u>.

Still yet, the Examiner has relied on the following excerpts et al. from Chess to

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meet applicant's claimed "statistical log interface code operable, upon receipt of a file, to determine with reference to the statistical log the count value relating to that file; action determination code operable, if the count value determined by the statistical log interface code exceeds a predetermined threshold" (see this or similar, but not necessarily identical language in each of the independent claims).

> "After the viral set or sets have been established in step 312, control passes to step 314, in which the system determines whether there are any viral sets containing one or more macros. If there are no such viral sets, e.g., the set of names is empty, the module 202 returns with no action. Otherwise, if that set of names (viral set(s)) is not empty, the module concludes that, for each such viral set, a virus consisting of a set of macros with these names (or the macros in that set) may have infected the system and the user is informed and asked if repair should be carried out in step 316. If, in step 318, a message is received indicating that the user replied in the affirmative, the method continues in FIG. 3C. If, however, the user does not request a repair, the method ends." (col. 6, lines 15-28)

As set forth earlier, the Examiner's proposed combination fails to even suggest any sort of count value indicating the number of times that the file has been sent to the computer for review. To this end, it is impossible for the reference to meet applicant's claimed technique used to "determine with reference to the statistical log the count value relating to that file." let alone a condition regarding whether "the count value determined by the statistical log interface code exceeds a predetermined threshold" (emphasis added), as claimed. After carefully reviewing the above excerpt and the remaining references, for that matter, it is apparent that there is only a teaching of a determination as to whether a macro is infected. There is not, however, any sort of determination whether a count value indicating the number of times that the file has been sent to the computer for review exceeds a predetermined threshold.

Even still, the Examiner has relied on the following excerpts et al. from Smithson to meet applicant's claimed "weighting indicating the likelihood that a file having that value of said one or more predetermined attributes will be malware" and "referenc[ing] the weighting table to determine the weighting to be associated with the file, based on the value of said one or more predetermined attributes associated with that file in the

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statistical log" (see this or similar, but not necessarily identical language in each of the independent claims).

> "The computer program executing on the computer system of FIG. 2 seeks to detect a virus outbreak by monitoring one or more measurement parameters obtained over a measurement period against predetermined threshold levels. This process is illustrated in FIG. 3. FIG. 3 shows four measurement parameters with their associated (user controlled) threshold levels Th1, Th2, Th3 and Th4. The computer program periodically checks each of the measurement parameters against its respective threshold to determine if that threshold has been crossed. In the case of the measurement parameters 1, 2 and 4, the normal state for these measurement parameters is less than their respective threshold values. Conversely, the normal state for the measurement parameter 3 is greater than its threshold value." (col. 4, lines 5-20)

The foregoing excerpt from Smithson discloses thresholds, not weights as claimed by applicant. Further, Smithson's measurement parameters and thresholds are associated with aggregate file activity, not a particular file. To this end, Smithson simply fails to meet applicant's claimed "referenc[ing] the weighting table to determine the weighting to be associated with the file, based on the value of said one or more predetermined attributes associated with that file in the statistical log" (emphasis added).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail

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to teach or suggest all of the claim limitations, as noted above. Thus, a notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claim 11 et al., the Examiner has relied on the following excerpts from the Smithson reference to make a prior art showing of applicant's claimed "each entry in the statistical log ... further arranged to identify, for each sender of that file, the number of times that that sender has sent the file in addition to the count value indicating the total number of times that the file has been sent" (see this or similar, but not necessarily identical language in each of the independent claims).

> "As preferred examples of the measurement parameters that may be used there are proposed:
>   1. How many E-mail messages are sent having an identical message title.
> 2. How many E-mail messages are sent identical file attachment.
> 3. How many email messages are sent having a file attachment of a given file type.
> 4. How many E-mail messages are sent having a file attachment that is an executable file.
> 5. The E-mail through put within the computer system.
> 6. The E-mail throughput measured in a form dependent upon a number of E-mails multiplied by a total size for the E-mails."
> (Col. 4, lines 25-40)

Again, as noted above, Smithson's measurement parameters and thresholds are associated with aggregate file activity, not a particular file. To this end, Smithson simply fails to meet applicant's claimed "number of times that that sender has sent the file in addition to the count value indicating the total number of times that the file has been sent." It is further noted that the measurement parameters does not track a per-sender number, and thus fails to meet applicant's claimed "each entry in the statistical log ... further arranged to identify, for each sender of that file, the number of times that that sender has sent the file in addition to the count value indicating the total number of times that the file has been sent" (emphasis added).

Thus, only applicant teaches and claims use of both 1) a number of times that a

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<u>particular</u> sender has sent a file, <u>and</u> 2) a <u>total</u> number of times the file has been sent *irrespective of sender* in each entry in the statistical log. Note Table 1 below which illustrates such claimed subject matter.

<u>Table 1</u>

Entry_1 (associated with file_1)

    Sender_1

        Number of times file_1 is sent by Sender_1

    Sender_2

        Number of times file_1 is sent by Sender_2

    Total number of times file_1 is sent

Entry_2 (associated with file_2)

    Sender_1

        Number of times file_2 is sent by Sender_1

    Sender_2

        Number of times file_2 is sent by Sender_2

    Total number of times file_2 is sent

Again, a notice of allowance or a specific prior art showing of <u>all</u> of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this

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application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P484/01.103.01).

Respectfully submitted,

Zilka-Kotab, PC.

Kevin J. Zilka
Registration No. 41,429

P.O. Box 721120
San Jose, CA 95172-1120
408-505-5100